



General Assembly

**Amendment**

February Session, 2010

LCO No. 3551

**\*HB0542003551HD0\***

Offered by:

REP. ROY, 119<sup>th</sup> Dist.

SEN. MEYER, 12<sup>th</sup> Dist.

To: House Bill No. 5420

File No. 280

Cal. No. 155

**"AN ACT CONCERNING THE TRANSITION FROM THE TEN MIL PROGRAM IN 2011."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 22a-38 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2010*):

5 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this  
6 act, and section 503 of this act:

7 (1) "Commissioner" means the Commissioner of Environmental  
8 Protection;

9 (2) "Person" means any person, firm, partnership, association,  
10 corporation, limited liability company, company, organization or legal  
11 entity of any kind, including municipal corporations, governmental  
12 agencies or subdivisions thereof;

13 (3) "Municipality" means any town, consolidated town and city,  
14 consolidated town and borough, city and borough;

15 (4) "Inland wetlands agency" means a municipal board or  
16 commission established pursuant to and acting under section 22a-42,  
17 as amended by this act;

18 (5) "Soil scientist" means an individual duly qualified in accordance  
19 with standards set by the federal Office of Personnel Management;

20 (6) "Material" means any substance, solid or liquid, organic or  
21 inorganic, including, but not limited to soil, sediment, aggregate, land,  
22 gravel, clay, bog, mud, debris, sand, refuse or waste;

23 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or  
24 radioactive, which may pollute or tend to pollute any of the waters of  
25 the state;

26 (8) "Pollution" means harmful thermal effect or the contamination or  
27 rendering unclean or impure of any waters of the state by reason of  
28 any waste or other materials discharged or deposited therein by any  
29 public or private sewer or otherwise so as directly or indirectly to  
30 come in contact with any waters;

31 (9) "Rendering unclean or impure" means any alteration of the  
32 physical, chemical or biological properties of any of the waters of the  
33 state, including, but not limited to change in odor, color, turbidity or  
34 taste;

35 (10) "Discharge" means the emission of any water, substance or  
36 material into waters of the state whether or not such substance causes  
37 pollution;

38 (11) "Remove" includes, but shall not be limited to drain, excavate,  
39 mine, dig, dredge, suck, bulldoze, dragline or blast;

40 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,  
41 place, discharge or emit;

42 (13) "Regulated activity" means any operation within or use of a  
43 wetland or watercourse involving removal or deposition of material,  
44 or any obstruction, construction, alteration or pollution, of such  
45 wetlands or watercourses, but shall not include the specified activities  
46 in section 22a-40, as amended by this act;

47 (14) "License" means the whole or any part of any permit, certificate  
48 of approval or similar form of permission which may be required of  
49 any person by the provisions of sections 22a-36 to 22a-45a, inclusive;

50 (15) "Wetlands" means land, including submerged land, not  
51 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which  
52 consists of any of the soil types designated as poorly drained, very  
53 poorly drained, alluvial, and floodplain by the National Cooperative  
54 Soils Survey, as may be amended from time to time, of the Natural  
55 Resources Conservation Service of the United States Department of  
56 Agriculture;

57 (16) "Watercourses" means rivers, streams, brooks, waterways,  
58 lakes, ponds, marshes, swamps, bogs and all other bodies of water,  
59 natural or artificial, vernal or intermittent, public or private, which are  
60 contained within, flow through or border upon this state or any  
61 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,  
62 inclusive. Intermittent watercourses shall be delineated by a defined  
63 permanent channel and bank and the occurrence of two or more of the  
64 following characteristics: (A) Evidence of scour or deposits of recent  
65 alluvium or detritus, (B) the presence of standing or flowing water for  
66 a duration longer than a particular storm incident, and (C) the  
67 presence of hydrophytic vegetation;

68 (17) "Natural vegetation" means naturally occurring shrubs, trees or  
69 other plants, but does not include lawns or manicured grass areas;

70 ~~[(17)]~~ (18) "Feasible" means able to be constructed or implemented  
71 consistent with sound engineering principles; and

72 ~~[(18)]~~ (19) "Prudent" means economically and otherwise reasonable

73 in light of the social benefits to be derived from the proposed regulated  
74 activity provided cost may be considered in deciding what is prudent  
75 and further provided a mere showing of expense will not necessarily  
76 mean an alternative is imprudent.

77 Sec. 502. Subsection (a) of section 22a-40 of the general statutes is  
78 repealed and the following is substituted in lieu thereof (*Effective*  
79 *October 1, 2010*):

80 (a) The following operations and uses shall be permitted in  
81 wetlands and watercourses, as of right:

82 (1) Grazing, farming, as described in section 1-1, nurseries,  
83 gardening and harvesting of crops and farm ponds of three acres or  
84 less essential to the farming operation, and activities conducted by, or  
85 under the authority of, the Department of Environmental Protection  
86 for the purposes of wetland or watercourse restoration or  
87 enhancement or mosquito control. The provisions of this subdivision  
88 shall not be construed to include road construction or the erection of  
89 buildings not directly related to the farming operation, relocation of  
90 watercourses with continual flow, filling or reclamation of wetlands or  
91 watercourses with continual flow, clear cutting of timber except for the  
92 expansion of agricultural crop land, the mining of top soil, peat, sand,  
93 gravel or similar material from wetlands or watercourses for the  
94 purposes of sale;

95 (2) A residential home [(i)] (A) for which a building permit has been  
96 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been  
97 issued or the subdivision has been approved by a municipal planning,  
98 zoning or planning and zoning commission as of the effective date of  
99 promulgation of the municipal regulations pursuant to subsection (b)  
100 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further  
101 provided no residential home shall be permitted as of right pursuant  
102 to this subdivision unless the permit was obtained on or before July 1,  
103 1987;

104 (3) Boat anchorage or mooring;

105 (4) Uses incidental to the enjoyment and maintenance of residential  
106 property, such property defined as equal to or smaller than the largest  
107 minimum residential lot site permitted anywhere in the municipality,  
108 provided in any town, where there are no zoning regulations  
109 establishing minimum residential lot sites, the largest minimum lot site  
110 shall be two acres. Such incidental uses shall include maintenance of  
111 existing structures and landscaping but shall not include removal or  
112 deposition of significant amounts of material from or onto a wetland  
113 or watercourse or diversion or alteration of a watercourse;

114 (5) Construction and operation, by water companies as defined in  
115 section 16-1 or by municipal water supply systems as provided for in  
116 chapter 102, of dams, reservoirs and other facilities necessary to the  
117 impounding, storage and withdrawal of water in connection with  
118 public water supplies except as provided in sections 22a-401 and 22a-  
119 403; and

120 (6) Maintenance relating to any drainage pipe which existed before  
121 the effective date of any municipal regulations adopted pursuant to  
122 section 22a-42a, as amended by this act, or July 1, 1974, whichever is  
123 earlier, provided such pipe is on property which is zoned as residential  
124 but which does not contain hydrophytic vegetation. For purposes of  
125 this subdivision, "maintenance" means the removal of accumulated  
126 leaves, soil, and other debris whether by hand or machine, while the  
127 pipe remains in place.

128 Sec. 503. (NEW) (*Effective October 1, 2010*) (a) Except as provided in  
129 subsection (b) of this section, when considering an application for a  
130 proposed regulated activity, a municipal inland wetlands agency may  
131 prohibit the destruction of natural vegetation within (1) one hundred  
132 feet of a wetlands or watercourse, or (2) the distance around the  
133 wetlands or watercourse regulated by the municipality pursuant to  
134 subsection (f) of section 22a-42a of the general statutes if such distance  
135 is less than one hundred feet from such wetlands or watercourse.

136 (b) A municipal inland wetlands agency may allow the removal of

137 natural vegetation in connection with a proposed regulated activity if  
138 (1) the applicant can demonstrate that the removal will have no likely  
139 impact or effect on the soil and water characteristics of such wetlands  
140 or watercourse, or (2) there is no feasible or prudent alternative to the  
141 removal, provided such proposed activity meets all other permitting  
142 requirements and applicable provisions of chapter 440 of the general  
143 statutes.

144 (c) The provisions of this section shall not apply to construction  
145 activities that are ancillary to existing residential uses, including, but  
146 not limited to, the construction of structures such as decks,  
147 outbuildings, fences or walkways. Any such construction activities  
148 shall be subject to all other permitting requirements and applicable  
149 provisions of chapter 440 of the general statutes and any natural  
150 vegetation in proximity to such construction activities shall be  
151 protected or restored to the maximum extent practicable.

152 (d) The as of right uses specified in section 22a-40 of the general  
153 statutes, as amended by this act, shall be permitted in areas of natural  
154 vegetation located within the distance around the wetlands or  
155 watercourse regulated by the municipality in accordance with  
156 subsection (a) of this section.

157 Sec. 504. Section 22a-42 of the general statutes is repealed and the  
158 following is substituted in lieu thereof (*Effective October 1, 2010*):

159 (a) To carry out and effectuate the purposes and policies of sections  
160 22a-36 to 22a-45a, inclusive, as amended by this act, it is hereby  
161 declared to be the public policy of the state to require municipal  
162 regulation of activities affecting the wetlands and watercourses within  
163 the territorial limits of the various municipalities or districts, to  
164 preserve and to prevent the despoliation and destruction of such  
165 wetlands and watercourses.

166 (b) Any municipality may acquire wetlands and watercourses  
167 within its territorial limits by gift or purchase, in fee or lesser interest  
168 including, but not limited to, lease, easement or covenant, subject to

169 such reservations and exceptions as it deems advisable.

170 (c) On or before July 1, 1988, each municipality shall establish an  
171 inland wetlands agency or authorize an existing board or commission  
172 to carry out the provisions of sections 22a-36 to 22a-45, inclusive, as  
173 amended by this act. Each municipality, acting through its legislative  
174 body, may authorize any board or commission, as may be by law  
175 authorized to act, or may establish a new board or commission to  
176 promulgate such regulations, in conformity with the regulations  
177 adopted by the commissioner pursuant to section 22a-39, as are  
178 necessary to protect the wetlands and watercourses within its  
179 territorial limits. The ordinance establishing the new board or  
180 commission shall determine the number of members and alternate  
181 members, the length of their terms, the method of selection and  
182 removal and the manner for filling vacancies in the new board or  
183 commission. No member or alternate member of such board or  
184 commission shall participate in the hearing or decision of such board  
185 or commission of which he is a member upon any matter in which he  
186 is directly or indirectly interested in a personal or financial sense. In  
187 the event of such disqualification, such fact shall be entered on the  
188 records of such board or commission and replacement shall be made  
189 from alternate members of an alternate to act as a member of such  
190 commission in the hearing and determination of the particular matter  
191 or matters in which the disqualification arose. For the purposes of this  
192 section, the board or commission authorized by the municipality or  
193 district, as the case may be, shall serve as the sole agent for the  
194 licensing of regulated activities.

195 (d) At least one member of the inland wetlands agency or staff of  
196 the agency shall be a person who has completed the comprehensive  
197 training program developed by the commissioner pursuant to section  
198 22a-39. Failure to have a member of the agency or staff with training  
199 shall not affect the validity of any action of the agency. The  
200 commissioner shall annually make such program available to one  
201 person from each town without cost to that person or the town. Each  
202 inland wetlands agency shall hold a meeting at least once annually at

203 which information is presented to the members of the agency which  
204 summarizes the provisions of the training program. The commissioner  
205 shall develop such information in consultation with interested persons  
206 affected by the regulation of inland wetlands and shall provide for  
207 distribution of video presentations and related written materials which  
208 convey such information to inland wetlands agencies. In addition to  
209 such materials, the commissioner, in consultation with such persons,  
210 shall prepare materials which provide guidance to municipalities in  
211 carrying out the provisions of subsection (f) of section 22a-42a.

212 (e) Any municipality, pursuant to ordinance, may act through the  
213 board or commission authorized in subsection (c) of this section to join  
214 with any other municipalities in the formation of a district for the  
215 regulation of activities affecting the wetlands and watercourses within  
216 such district. Any city or borough may delegate its authority to  
217 regulate inland wetlands under this section to the town in which it is  
218 located.

219 (f) Municipal or district ordinances or regulations may embody any  
220 regulations promulgated hereunder, in whole or in part, or may  
221 consist of other ordinances or regulations in conformity with  
222 regulations promulgated hereunder. Any ordinances or regulations  
223 shall be for the purpose of effectuating the purposes of sections 22a-36  
224 to 22a-45, inclusive, as amended by this act, and [,] a municipality or  
225 district, in acting upon ordinances and regulations, shall incorporate  
226 the factors set forth in section 22a-41.

227 (g) Nothing contained in this section shall be construed to limit the  
228 existing authority of a municipality or any boards or commissions of  
229 the municipality, provided the commissioner shall retain authority to  
230 act on any application filed with said commissioner prior to the  
231 establishment or designation of an inland wetlands agency by a  
232 municipality.

233 Sec. 505. Subsection (c) of section 22a-42a of the 2010 supplement to  
234 the general statutes is repealed and the following is substituted in lieu



235 thereof (*Effective October 1, 2010*):

236 (c) (1) On and after the effective date of the municipal regulations  
237 promulgated pursuant to subsection (b) of this section, no regulated  
238 activity shall be conducted upon any inland wetland or watercourse  
239 without a permit. Any person proposing to conduct or cause to be  
240 conducted a regulated activity upon an inland wetland or watercourse  
241 shall file an application with the inland wetlands agency of the town or  
242 towns wherein the wetland or watercourse in question is located. The  
243 application shall be in such form and contain such information as the  
244 inland wetlands agency may prescribe. The date of receipt of an  
245 application shall be determined in accordance with the provisions of  
246 subsection (c) of section 8-7d. The inland wetlands agency shall not  
247 hold a public hearing on such application unless the inland wetlands  
248 agency determines that the proposed activity may have a significant  
249 impact on wetlands or watercourses, a petition signed by at least  
250 twenty-five persons who are eighteen years of age or older and who  
251 reside in the municipality in which the regulated activity is proposed,  
252 requesting a hearing is filed with the agency not later than fourteen  
253 days after the date of receipt of such application, or the agency finds  
254 that a public hearing regarding such application would be in the  
255 public interest. An inland wetlands agency may issue a permit without  
256 a public hearing provided no petition provided for in this subsection is  
257 filed with the agency on or before the fourteenth day after the date of  
258 receipt of the application. Such hearing shall be held in accordance  
259 with the provisions of section 8-7d. The inland wetlands agency shall  
260 consider all relevant evidence brought before such agency or its agent  
261 by any person or entity, including, but not limited to, scientific  
262 evidence, expert opinion, direct observations made regarding the  
263 proposed regulated activity, environmental reviews, policy letters or  
264 guidance documents provided by or on behalf of an environmental  
265 review team or by the Department of Environmental Protection and  
266 written comments or oral testimony submitted by the Commissioner of  
267 Public Health or by or on behalf of a water company in response to  
268 written notice provided to such water company pursuant to section

269 22a-42f. If the inland wetlands agency, or its agent, fails to act on any  
270 application within thirty-five days after the completion of a public  
271 hearing or in the absence of a public hearing within sixty-five days  
272 from the date of receipt of the application, or within any extension of  
273 any such period as provided in section 8-7d, the applicant may file  
274 such application with the Commissioner of Environmental Protection  
275 who shall review and act on such application in accordance with this  
276 section. Any costs incurred by the commissioner in reviewing such  
277 application for such inland wetlands agency shall be paid by the  
278 municipality that established or authorized the agency. Any fees that  
279 would have been paid to such municipality if such application had not  
280 been filed with the commissioner shall be paid to the state. The failure  
281 of the inland wetlands agency or the commissioner to act within any  
282 time period specified in this subsection, or any extension thereof, shall  
283 not be deemed to constitute approval of the application.

284 (2) An inland wetlands agency may delegate to its duly authorized  
285 agent the authority to approve or extend an activity that is not located  
286 in a wetland or watercourse when such agent finds that the conduct of  
287 such activity would result in no greater than a minimal impact on any  
288 wetland or watercourse provided such agent has completed the  
289 comprehensive training program developed by the commissioner  
290 pursuant to section 22a-39. Notwithstanding the provisions for receipt  
291 and processing applications prescribed in subdivision (1) of this  
292 subsection, such agent may approve or extend such an activity at any  
293 time. Any person receiving such approval from such agent shall,  
294 within ten days of the date of such approval, publish, at the applicant's  
295 expense, notice of the approval in a newspaper having a general  
296 circulation in the town wherein the activity is located or will have an  
297 effect. Any person may appeal such decision of such agent to the  
298 inland wetlands agency within fifteen days after the publication date  
299 of the notice and the inland wetlands agency shall consider such  
300 appeal at its next regularly scheduled meeting provided such meeting  
301 is no earlier than three business days after receipt by such agency or its  
302 agent of such appeal. The inland wetlands agency shall, at its

303 discretion, sustain, alter or reject the decision of its agent or require an  
304 application for a permit in accordance with subdivision (1) of  
305 subsection (c) of this section."